IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8354 of 2004

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DINESHCHANDRA CHANUDLAL MEHTA &3 - Petitioner(s)

Versus

HEIRS OF DECEASED DAHYABHAI J PATEL &7 - Respondent(s)

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Appearance :

Ms. Sheha P. Vaidya for MR JAYANT P BHATT for Petitioner No(s).: 1,2,3.

RULE SERVED for Respondent No(s).: 1,3,4.
DS AFF.NOT FILED (R) for Respondent No(s).: 1, 2,3, 4,5,6,7.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 21/06/2005

ORAL JUDGMENT

1.Instant petition under Article 226 and 227 of the Constitution of India is filed against the order dated 6.7.2004 recorded below application Exh.109 in Regular Civil Suit No. 25 of 1993 by the learned Civil Judge (JD), Mansa, by which the application filed by the present petitioners to implead themselves as co-plaintiff Nos. 2 to 4 came to be granted on condition to deposit Rs.5000/- by each of the petitioners.

1.Petitioners are the cousins of respondent No.7. But, due to domestic differences between them, they are not having and keeping good relations with each other. As per the case of the petitioners, the petitioners' father and father of respondent No.7 were occupying agricultural land which is known as 'Dhunkdu' bearing Survey No. 2502 admeasuring about 4 Bighas. Original land owner one Shri Shankleshwar Ganpatram Mehta had mortgaged the said land to the father of the present petitioners and respondent No.7. The said land was jointly sub-mortgaged by the father of the petitioners and father of respondent No.7 on 22.5.1961 for a period of 41 years and for an amount of Rs.2601/- to the father of respondent Nos. 1 to 6 (original defendant Nos. 1 to 6). As per the case of the petitioners they are having 50% legal interest and share in the above disputed land. The respondent No.7 had filed the Regular Civil Suit No. 25 of 1993 (old Regular Civil Suit No. 122 of 1985) for redemption of mortgage against defendant Nos. 1 to 6 before the Court of learned Civil Judge (JD) at Mansa. The respondent No.7 somehow not informed the petitioners that he had filed the above Suit for redemption against respondent Nos. 1 to 6 and that is why the petitioners were joined as plaintiffs in the above Suit. When the present petitioners came to know that their limitation to file the Suit for redemption of mortgage is going to expire, they rushed to the Court of the learned Civil Judge (JD) at Mansa and by way of filing the application below Exh. 109, requested the Hon'ble Court that may be joined as plaintiffs Nos. 2 to 4 under the provisions of Order I Rule 10(2) of the Code of Civil Procedure ('the Code' for short) in the Suit. The learned Civil Judge (JD), Mansa has been pleased to allow the application of the petitioners at Exh. 109 on condition that the petitioners shall have to pay compensatory cost of Rs.5000/- within 10 days from the date of the

order to the respondent Nos. 1 to 6. The petitioners partly aggrieved by the aforesaid order dated 6.7.2004, passed in Regular Civil Suit No. 25 of 1993, below application Exh. 109 filed this Special Civil Application under Articles 226 and 227 of the Constitution of India.

2.Ms. Sneha P. Vaidya, learned advocate for Mr.J.P.Bhatt, learned advocate of the petitioners contended that the order which is impugned, i.e. imposition of compensatory cost of Rs.5000/- to each of the petitioners, is contrary to the statutory provisions contained under Section 35A of the Code and therefore, the said order is required to be struck down by this Court in exercise of powers, either under Article 226 or under Article 227 of the Constitution of India. She, therefore, urged to allow this petition.

3.This Court has considered the submissions advanced by Ms. Sneha P. Vaidya, learned advocate of the petitioners, perused the impugned order and the statutory provisions contained under the Code.

4.So far as the factual matrix is concerned, there is no dispute. On perusal of the averments made in the petition it is seen that the present petitioners are very much interested in the said Suit and therefore the learned trial Judge has very rightly passed the order to implead them as co-plaintiffs. The dispute is centered around only against the imposition of cost of Rs.5000/- to each of the petitioners. Therefore, the question which is required to be considered is as to whether the learned trial Judge was justified in imposing the cost of Rs.5000/- to each of the petitioners and whether it is against the statutory provisions contained under the Code.

5.To answer the aforesaid questions it would be advantageous to refer to Section 35A of the Code:

35A:**Compensatory costs in respect of false or vexatious claims or defences:-**

“*(1)If any suit or other proceedings, [including an execution proceeding [but excluding an appeal or a revision]]any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if, thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the court, [if it so thinks fit] may, after recording its reasons for holding such claim or defence to be false or vexatious, made an order for the payment to the objector by the party by whom such claim or defence has been put forward, of cost by way of compensation.*

(2) No Court shall make any such order for the payment of an amount exceeding [three thousand rupees] or exceeding the limits of its

pecuniary jurisdiction, whichever amount is less....
(3)...
(4)...”

6.As per Sub-Section 2 of the Act, the learned Civil Judge has no power to impose the cost exceeding Rs.3000/- or exceeding the limits of the pecuniary jurisdiction, whichever amount is less.

7.In the instant case the learned Civil Judge has imposed the cost of Rs.5000/- to each of the petitioners and that too when their grievance was justified that the original plaintiff has not impleaded them as co-plaintiffs and therefore, they themselves had to approach the Court by filing application to implead themselves as co-plaintiffs. Therefore, according to this Court, imposition of the heavy compensatory cost is unwarranted on the facts and in the circumstances of the case, which is required to be quashed and set aside by allowing this petition.

8.For the foregoing reasons, petition succeeds and accordingly it is allowed with no order as to costs. Order dated 6.7.2004 qua imposition of compensatory cost of Rs.5000/- to each of the petitioners is hereby quashed and set aside. Rule is made absolute.

(A.M.Kapadia,J)

Jayanti*